IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.348 OF 2006

Ashok Leyland Finance Ltd. ...Petitioners

v/s

Mr Rajesh Shetty and anr. ...Respondents

Ms Shakuntala Joshi for Petitioners.

Ms A.G. Bhaktawani for Respondent No.1.

CORAM : D.K. DESHMUKH J.

DATE : 16TH OCTOBER 2006.

P.C. :-

1. This is a petition filed under section 9 of the Arbitration and Conciliation Act 1996. The learned counsel appearing for petitioners, at the outset, stated that she is withdrawing the notice dated 2nd August 2006 which, according to her, was issued by the petitioners to the respondents on 3rd August 2006. Thus, this petition has been filed without invoking the arbitration clause. The learned counsel appearing for petitioners submits that the petitioners are entitled to file a petition under section 9 of the said Act without invoking the arbitration clause because section 9 of the said Act provides that the Court can grant interim order even before commencement of the arbitral proceedings. It is true that the Court has been conferred power by section 9 to make an order as interim measure even before arbitration clause is invoked and arbitration proceedings are commenced, but it goes without saying that the petitioners will have to make out such a case for grant of interim measure even before the petitioners invoke arbitration clause. The petitioners will have to explain and satisfy the Court that for some reason beyond the control of the petitioners, the petitioners were not able to invoke the arbitration clause. The special feature is that in this case power to appoint

Arbitration is vested in the petitioners itself. Therefore, in my opinion, the burden entirely lies on the petitioners to satisfy the Court by making appropriate averment in the petition that even though the petitioners have not invoked the arbitration clause, the petitioners are entitled to interim order. I do not find any such averment made in the petition. Therefore, the petitioners are not entitled to any interim order.

Petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.